

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING #96-37**

WARNING

Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This presentation of the ruling in a redacted form is informational only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Department policy.

SUBJECT

Acceptance of resale certificates on sales made to out-of-state customers but drop shipped to purchaser's Tennessee customer.

SCOPE

This letter ruling is an interpretation and application of the tax law as it relates to a specific set of existing facts furnished to the department by the taxpayer. The rulings herein are binding upon the Department and are applicable only to the individual taxpayer being addressed.

This letter ruling may be revoked or modified by the Commissioner at any time.

Such revocation or modification shall be effective retroactively unless the following conditions are met, in which case the revocation shall be prospective only:

- (A) The taxpayer must not have misstated or omitted material facts involved in the transaction;
- (B) Facts that develop later must not be materially different from the facts upon which the ruling was based;
- (C) The applicable law must not have been changed or amended;
- (D) The ruling must have been issued originally with respect to a prospective or proposed transaction; and
- (E) The taxpayer directly involved must have acted in good faith in relying upon the ruling; and a retroactive revocation of the ruling must inure to the taxpayer's detriment.

FACTS

[THE TAXPAYER] is registered for sales and use tax purposes in Tennessee. Taxpayer sells tangible personal property, which consists of wire and cable related products, to companies located outside Tennessee (in this ruling, such companies will be referred to as “Company A”), who ask taxpayer to drop ship the goods via common carrier from taxpayer’s locations inside and outside Tennessee to their customers in Tennessee (in this ruling, these companies will be referred to as “Company B”).

Company A, which is not registered in Tennessee, can provide taxpayer with its home state resale certificate. The taxpayer assumes that Company B, which receives the drop shipment in Tennessee, is reselling the product. The taxpayer claims it can make an accurate assumption in this regard based on the name of Company B.

QUESTIONS

Based upon these facts, could the taxpayer accept:

1. Company A's home state resale certificate alone to relieve taxpayer's burden of charging Tennessee sales tax and remitting it to Tennessee?
2. Company B's (the recipient of the drop shipment) Tennessee resale certificate (proving Company B is not the consumer according to TENN. COMP. R. & REGS. 1320-5-1-.96) to relieve taxpayer's burden of charging and remitting the sales tax to Tennessee, without the necessity of obtaining Company A's home state resale certificate?
3. Both Company A's home state resale certificate and Company B's resale certificate, in order to relieve taxpayer's burden of charging and remitting the sales tax to Tennessee?

RULINGS

1. No.
2. No.
3. Yes.

ANALYSIS

The sales tax is levied on the privilege of engaging in the business of selling tangible personal property at retail. T.C.A. § 67-6-202(a). “Retail sales” or “sales at retail” includes sales of tangible personal property for any purpose other than resale, with the

provision that sales for resale must be in strict compliance with rules and regulations promulgated by the commissioner. T.C.A. § 67-6-102(23)(A).

There are three regulations applicable to the facts presented in this ruling request.

TENN. COMP. R. & REGS. 1320-5-1-.68 (“Rule 68”) governs sales for resale, and states, in pertinent part:

(1) Dealers shall require certificates of resale for all tangible personal property sold or services rendered in this State, for the purpose of resale, and such certificates must be available at the establishment of the dealer for ready inspection and comparison with the deductions claimed on monthly Sales and Use Tax returns. A dealer duly registered under the provisions of the Sales Tax Act and continually engaged in the business of selling tangible personal property or taxable services at retail may present evidence to his wholesaler or supplier as to his registration as a retailer, and shall not be required to execute additional certificates of resale for individual purchases as long as there is no change in the character of his operation, and the purchases are of tangible personal property or taxable services of a sort usually purchased by the purchaser for resale.

(2) All sales for resale which are not supported by resale certificates properly executed shall be deemed retail sales, and the dealer held liable for the tax unless the same comes within the exception mentioned as a part of paragraph (1) of this rule.

TENN. COMP. R. & REGS. 1320-5-1-.96 (“Rule 96”) states:

Except in cases where specific and satisfactory arrangements are made with the Commissioner before sales and deliveries are made, sales of tangible personal property or taxable services made by a dealer to an out-of-state vendor who directs that the dealer act as his (the out-of-state vendor) agent to deliver or ship tangible personal property or taxable services to his (the out-of-state vendor) customer, who is a user or consumer, are subject to the Sales or Use Tax. The dealer so acting as agent for the out-of-state vendor must collect the tax involved on the transaction unless the transaction comes within the conditions indicated herein.

The pertinent part of TENN. COMP. R. & REGS. 1320-5-1-.29 (“Rule 29”) states:

(2) Bona fide dealers outside the State of Tennessee, who make purchases of tangible personal property or taxable services in this State which would otherwise be subject to the provisions of the Sales and Use Tax Law, may make purchases of items or services which they normally sell free of the

Sales Tax, provided such a dealer will furnish his vendor in this State with a valid certificate of resale showing that he is a dealer located out of this State and would be entitled to purchase such property upon a resale certificate if he were a dealer in this State.

Under the provisions of Rule 68, in order for a sale to qualify as a sale for resale, it is clearly necessary for the vendor to obtain his customer's resale certificate and retain it for his files. In accordance with Rule 29, a foreign resale certificate is acceptable if a foreign dealer took delivery of goods in Tennessee, unless the transaction is of the type contemplated by Rule 96, which sets out additional requirements for sales where the goods are sold to a foreign dealer but drop shipped to a user and consumer in Tennessee. Rule 96 does not state what constitutes "specific and satisfactory arrangements" to be made prior to the sale. In practice, the Department has required Tennessee registration by the out-of-state reseller and the issuance of a resale certificate with the Tennessee registration number in order to exempt such a sale.

With the above background, each of the options listed in the questions set out above will be addressed.

OPTION 1

If Company A's home state resale certificate is presented, the requirements of Rule 68 have been fulfilled. Rule 96 is not applicable if the drop shipment is made to a party other than a user and consumer. While the facts presented in the ruling request indicate the use of the name of Company B in determining if Company B is a user and consumer, this procedure may not always produce a correct determination whether or not Company B is a user and consumer. Therefore, in all situations, Company A's home state certificate alone does not prove Company B is not a user and consumer and may not be sufficient to relieve the taxpayer of its tax collection duties.

OPTION 2

If the resale certificate of Company B is obtained, it would make clear that the transaction is not a transaction covered by Rule 96, since the certificate would prove that Company B is not a user and consumer. However, Company B's certificate does not meet the requirements of Rules 29 and 68, which can be met only by Company A's resale certificate.

OPTION 3

If the resale certificates of both Company A and Company B are obtained, the taxpayer has (1) complied with the requirements of a sale for resale and (2) obtained satisfactory proof that the goods were not delivered to a user and consumer and therefore, Rule 96 is not applicable. Only this option, among the three presented, is satisfactory to establish, in all cases, that the taxpayer is not liable to collect the tax.

Owen Wheeler
Tax Counsel 3

APPROVED: Ruth E. Johnson

DATE: 12/19/96